



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 8, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James Bopp, Jr., Esq.
Bopp, Coleson & Bostrom
2 Foulkes Square
401 Ohio St.
Terre Haute, IN 47808-8100

RE: MUR 3774
National Right to Life Committee, Inc.
Minnesota Citizens Concerned for
Life Committee for a
Pro-Life Congress and
Jacqueline A. Schweitz, as treasurer

Dear Mr. Bopp:

On May 20, 1993, the Federal Election Commission notified your client, the National Right to Life Committee, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On March 6, 1995, your client was notified that the Commission had received an amendment to the complaint alleging similar violations of the Act by your client. Also on March 6, 1995 your clients, Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress ("MCCL PAC") and Jacqueline A. Schweitz, as treasurer, were notified that the amended complaint alleged violations of the Act. A copy of the complaint and the amendment were forwarded to either you or your clients on those dates.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on August 1, 1995, found that there is reason to believe the National Right to Life Committee, Inc. violated 2 U.S.C. § 441b(a), and that MCCL PAC and Jacqueline A. Schweitz as treasurer violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a)(1), provisions of the Act and Commission regulations. The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information.

James Bopp, Jr., Esq.
Page 2

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the Order and Subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.


If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Dawn Odrowski or Elizabeth Stein, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,



Lee Ann Elliott
Vice Chairman

Enclosures

Order to Submit Written Answers
Subpoena for Production of Documents
Factual and Legal Analyses (2)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 3774
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Mr. David O'Steen, Executive Director
National Right to Life Committee, Inc.
419 7th Street, NW
Suite 500
Washington, DC 20004

c/o James Bopp, Jr., Esq.
Bopp, Coleson & Bostrom
2 Foulkes Square
401 Ohio Street
Terre Haute, Indiana 47808-8100

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

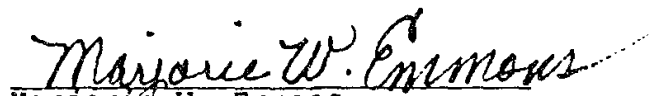
Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand in Washington, D.C. on this
7th day of August, 1995.

For the Commission,


Lee Ann Elliott
Vice Chairman

ATTEST:


Marjorie W. Emmons
Secretary to the Commission

Attachments
Interrogatories and Request for Documents

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INSTRUCTIONS

In answering the enclosed interrogatories and the request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from October 1, 1992 through the pendency of this matter.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Volunteer" shall mean any person who assisted an organization for five hours or more in the course of any week.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

QUESTIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. Identify all present or former officers, employees, agents or volunteers of the National Right to Life Committee, Inc. ("NRLC") who have knowledge of the payment of funds to the NRLC from the National Republican Senatorial Committee ("NRSC"). Provide the title of each individual so identified and describe his or her responsibilities.
2. With regard to the payments from the NRSC to the NRLC listed below:

<u>Date</u>	<u>Amount</u>
10/02/92	\$25,000
10/20/92	15,000
11/17/92	45,000
10/31/94	50,000
11/01/94	50,000
11/03/94	60,000
11/04/94	15,000

For each listed payment:

- a. Identify the person(s) who solicited the payment, or requested or suggested that it be made.
- b. Identify the person(s) to whom such solicitation, request, or suggestion was made.
- c. Describe the purpose and substance of each communication relating to or referencing the payment, both before and after the payment was made, between any officer, employee, agent or volunteer of the NRLC and any officer, employee, agent or volunteer of the NRSC. Identify the person(s) who initiated such communication and state the date on which each communication occurred. Provide all documents containing, relating to, or referencing each such communication.
- d. Identify and describe the fund into which the payment was deposited.
- e. Describe how each payment was used. Identify the person(s) involved in deciding how to use the payment, and state the bases upon which the person(s) made such decision.

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- f. State whether any officer, employee, agent or volunteer of the NRLC directly or indirectly informed any officer, employee, agent or volunteer of the NRSC of any decision regarding the use of any payment. If so, identify the persons involved, describe the information provided, and state the date on which such interaction occurred. Provide all documents containing evidence of, relating to, or referencing such information.
 3. Identify and provide all documents relating to or referencing the payments listed in Question 2, including, but not limited to check copies (front and back), check stubs, invoices, orders, bank statements, contracts, reports, memoranda, letters, understandings, agreements, in-house correspondence, or plans relating to or referencing the timing, purpose and use of the payments.
 4. State whether any transfer(s) of funds, contributions or other disbursements were made by the NRLC to:
 - a. Minnesota Citizens Concerned for Life, Inc. between October 1, 1992 and January 1, 1993.
 - b. National Right to Life PAC or Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress between October 1, 1992 and January 1, 1993.
 - c. Minnesota Citizens Concerned for Life, Inc. or the Pennsylvania Pro-Life Federation Inc., or to any other right-to-life corporation or connected organization between October 1, 1994 and January 1, 1995.
 - d. National Right to Life PAC, Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress or the Pennsylvania Pro-Life Federation PAC between October 1, 1994 to January 1, 1995.

If so, state the date, the amount and the purpose of each such transfer, contribution or other disbursement. Provide all documents memorializing or relating to each such transfer, contribution or other disbursement including check copies (front and back), check stubs, electronic transfer receipts and bank statements.

5. State the total amount expended by the NRLC for the following get-out-the-vote activities or communications in connection with the November 24, 1992 U.S. Senate run-off election in Georgia.
 - a. phone banks
 - b. radio ads
 - c. newspaper or print ads
 - d. television ads

- e. voter identification activity
 - f. voter guides
6. State the total amount expended by the NRLC for the following get-out-the-vote activities or communications in connection with the 1994 general election in Minnesota and Pennsylvania.
- a. phone banks
 - b. radio ads
 - c. newspaper or print ads
 - d. television ads
 - e. voter identification activity
 - f. voter guides
7. Provide copies of all documents referencing or relating to all get-out-the-vote activities financed or conducted by or on behalf of NRLC as identified in Questions 5 and 6 above, including but not limited to voter guides, radio and television ad scripts, phone scripts used for voter identification or get-out-the-vote drives, newspaper or other print ads, voter guides, media placement orders, orders for phone bank operations, invoices, checks, correspondence, contracts, proposals and guidelines.
8. Provide copies of all materials distributed by or on behalf of the NRLC in Georgia that reference the 1992 general election run-off for U.S. Senate.
9. Provide copies of all materials distributed by or on behalf of the NRLC in Pennsylvania and Minnesota that reference the 1994 general election.
10. Provide complete copies of the Form 1990 or 1990EZ tax return, including attachments, filed by the NRLC for 1992 and 1994.
11. Provide copies of NRLC's annual reports for 1992 and 1994.
12. Identify any present or former officers, employees, agents or volunteers of NRLC who are or at any time from January 1, 1992 to present were, officers, employees, agents or volunteers of the NRSC, the Coverdell for Senate Committee, Santorum '94, or the Rod Grams for U.S. Senate Committee.
13. Identify all present or former officers, employees, agents or volunteers of the NRLC who have knowledge of materials distributed by or on behalf of the NRLC, in Georgia that referenced the 1992 general election run-off, and in Pennsylvania or Minnesota that referenced the 1994 general election. Provide the title of each individual so identified, and describe their responsibilities with respect to such distribution.

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David O'Steen, Executive Director
MUR 3774
Page 8

14. Identify all present or former officers, employees, agents or volunteers who have knowledge of get-out-the-vote activities conducted by or on behalf of the NRLC in connection with the 1992 general election run-off for U.S. Senate in Georgia and the 1994 general election in Minnesota and Pennsylvania. Provide the title of each individual so identified and describe their responsibilities with respect to such activities.

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 3774

RESPONDENT: National Right to Life Committee, Inc.

I. GENERATION OF MATTER

This matter was generated by a complaint received on May 14, 1993, from counsel for the Democratic Senatorial Campaign Committee. The complaint alleges that the National Republican Senatorial Committee ("NRSC") made payments of non-federal funds to the National Right to Life Committee ("NRLC") and other groups. Complainant filed an amendment to the complaint on February 22, 1995, alleging that the NRSC and its then Chairman, Senator Phil Gramm, again circumvented the coordinated party expenditure limits of the Act by paying non-federal funds to the NRLC in order to influence the 1994 federal elections of Senator Rick Santorum in Pennsylvania and Senator Rod Grams in Minnesota after nearly exhausting allowable coordinated expenditures in the two states.

An examination of the complaint and the disclosure reports of the reporting entities reveals a repeated pattern of payments to the NRLC by the NRSC's non-federal account in the days and weeks before U.S. Senate elections. In the case of the 1992 and 1994 elections identified in the complaint, these payments were made when the NRSC had nearly exhausted its ability to make expenditures on behalf of its candidates. Responses were received from the NRLC.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

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National party committees occupy a special place within the political arena and the Federal Election Campaign Act of 1971, as amended ("the Act"), acknowledges this unique position by providing special mechanisms to allow national party committees an enhanced role within the process. The Act specifically provides that a national party committee or the party's senatorial campaign committee, or both in combination, may make a contribution of \$17,500 to each Senate candidate associated with the party in the year in which the candidate's election is held. 2 U.S.C. § 441a(h). A contribution is defined as "any gift, subscription, loan, advance or deposit of money or anything of value made by an person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions, i.e., "the provision of any goods and services without charge. . ." 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

In addition to the \$17,500 contribution limit, the Act also permits national and state party committees to make extensive coordinated expenditures on behalf of candidates for federal office in the general election according to the formula set out in 2 U.S.C. § 441a(d). Coordinated party expenditures are those made by a national party committee on behalf of a specific candidate but not paid directly to the candidate or committee. The Act defines an "expenditure" as including any purchase, payment, distribution, loan, advance, deposit, or gift of money,

or anything of value, made by any person for the purpose of influencing any election for federal office. No candidate or political committee shall knowingly make any expenditure in violation of the provisions of section 441a. 2 U.S.C. § 441a(f).

The coordinated expenditure provision enables political party committees to engage in activity that would otherwise result in a contribution to a candidate, and is the primary mechanism available to national and state party committees to support their candidates. See H.R. Rep. No. 94-1057, 94th Congress, 2d Session 59 (1976). The national and state political party committees may designate the party's senatorial campaign committees as their agent for purposes of making these expenditures. 11 C.F.R. § 110.7(a)(4), see also FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 28-29 (1981). The Act recognizes that parties are partisan organizations whose motivation is to further the goals of the party, and provides that a party, by definition, is incapable of making independent expenditures. See 11 C.F.R. § 110.7(b)(4); Advisory Opinion 1980-119; and FEC v. Colorado Republican Federal Campaign Committee, 1995 WL 372934 *1 (10th Cir. 1995) ("Colorado Republicans"). Hence, expenditures by a party committee or its designated agent on behalf of a candidate are presumed to be coordinated with the candidate and count towards the coordinated expenditure limits established by 2 U.S.C. § 441a(d)(3), regardless of whether the expenditures are actually coordinated with the candidate's campaign.

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The national party committee and the senatorial and congressional campaign committees may also conduct generic party activity without such activity resulting in either a contribution or counting towards a coordinated expenditure limit so long as no specific candidate is mentioned. 11 C.F.R. § 106.5(a)(2)(iv). Generic party activity includes voter identification drives, voter registration, get out the vote drives ("GOTV") and any other type of activity that encourages the general public to vote or support candidates of the particular party or associated with a particular issue, without mentioning a specific candidate. Id.

A party committee which finances political activity in connection with both federal and non-federal elections is required to either establish separate federal and non-federal accounts or conduct all activity in accordance with the limitations and prohibitions of the Act. 11 C.F.R. § 102.5(a)(1). All disbursements, contributions, expenditures and transfers in connection with any federal election must be made from the committee's federal account. 11 C.F.R.

§ 102.5(a)(1)(i).¹ The Commission has previously determined that where an organization with federal and non-federal accounts

1. Where a national party committee conducts activity which is in connection with both federal and non-federal elections, including generic party activity, all disbursements for the shared activity must still be from the federal account or from a separate allocation account established solely to pay allocable expenses. 2 U.S.C. § 106.5(g). The non-federal account must transfer funds to the federal account or an allocation account solely to cover the non-federal share of an allocable cost. Id. A national party Senate committee must allocate to its federal account a minimum of 65% of its administrative and generic voter drive expenses. 11 C.F.R. § 106.5(c)(2).

appears to have violated 11 C.F.R. § 102.5 by disbursing funds from a non-federal account in connection with a federal election, the committee violated 2 U.S.C. § 441b(a) if the non-federal account contained corporate or labor organization funds at the time of the disbursement. See e.g., MURs 2998, 2160, 3670. If the disbursement is made for the purpose of influencing federal elections it also qualifies as a contribution and is subject to the Act's contribution limits. Multicandidate political committees, including a party's Senate campaign committee, may contribute up to \$5,000 per year to non-candidate political committees. 2 U.S.C. § 441a(a)(2)(C).

The Act also prohibits corporations from making contributions or expenditures in connection with federal elections and prohibits any candidate or committee from knowingly accepting such prohibited contributions or expenditures. 2 U.S.C. § 441b.² In order for the prohibitions of 2 U.S.C. § 441b to apply to corporate expenditures, however, the Supreme Court in FEC v. Massachusetts Citizens for Life ("MCFL") held that independent corporate expenditures must constitute "express advocacy." 479 U.S. at 248. Thus, a corporation may use its general treasury funds to make

2. A corporation may, however, establish a separate segregated fund to accept contributions and make expenditures in connection with federal elections. 2 U.S.C. § 441b(b)(2)(C). The corporation then acts as a "connected organization," an organization which is not a political committee but which directly or indirectly establishes, administers or financially supports a political committee. 2 U.S.C. § 431(7); 11 C.F.R. § 100.6(c).

independent communications to the general public, including voter registration, GOTV material and phone banks, provided these activities do not expressly advocate the election or defeat of a clearly identified candidate. 11 C.F.R.

§ 114.4(b).³ However, corporate expenditures for such activities made in cooperation, consultation or concert with a candidate, a candidate's authorized committee or their agents are considered contributions and are thus prohibited by 2 U.S.C. § 441b. See 2 U.S.C. § 441a(a)(7)(B) and proposed Commission revisions to 11 C.F.R. 114.4(d), supra, at footnote 3 (providing that corporate voter drives shall not be coordinated with a candidate, group of candidates or political party). Thus, political party committees cannot use corporations as vehicles to make expenditures, which if made by the party itself, would be impermissible under the Act.

The Act also exempts from the definition of expenditure the costs of nonpartisan activity by corporations designed to encourage individuals to vote or register to vote.

3. The Commission has proposed revisions to its regulations governing corporate voter registration and GOTV drives to clarify that voter registration and GOTV drives aimed at the general public are permitted provided that they do not expressly advocate the election or defeat of a candidate or political party and are not coordinated with a candidate or political party. See proposed revisions to 11 C.F.R. § 114.4(d) contained in Notice of Proposed Rulemaking for Independent Expenditures; Corporate and Labor Organization Expenditures; Proposed Rule, 57 Fed Reg. 33548, 33566 (1992). These provisions were proposed in light of the Supreme Court's ruling in FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) and subsequent cases interpreting that decision. See especially, Faucher v. FEC, 928 F. 2d 468 (1st Cir.), cert. denied, 502 U.S. 820 (1991)(invalidating the Commission's voter guide regulations at 11 C.F.R. § 114.4(b)(5)).

2 U.S.C. § 431(9)(B)(ii). The legislative history of the 1979 amendments to the Act suggests that unlike corporations, party committees are not entitled to this exemption. In the 1979 amendments, Congress considered and apparently rejected extending 2 U.S.C. § 431(9)(B)(ii) to payments by party committees for voter drive activities. Instead, Congress passed a limited exemption for voter drives in support of a party's nominees for President and Vice President. See 2 U.S.C. § 431(8)(B)(xii) and (9)(B)(ix); S. Rep. No. 319, 96th Cong. 1st Sess. at 9 (1979) at 457 and S. 1757, 96th Cong. 1st Sess., reprinted in Legislative History of Federal Election Campaign Act of 1979 (hereinafter "Legislative History") at 457 and S. 1757, 96th Cong. 1st Sess. §§ 101(b)(5) and (c)(4) (1979), reprinted in Legislative History at 503, 506. Hence, a party committee cannot take advantage of an exemption for voter drive activity apparently unavailable to it by giving funds to an entity which does qualify for the exemption.

An organization becomes a political committee pursuant to 2 U.S.C. § 431(4) if it receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. Additionally, the Supreme Court has held that "[t]o fulfill the purpose of the Act [the designation of political committee] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Buckley v. Valeo, 424 U.S. 1, 79 (1976); MCFL, 479 U.S. 238, 252 n.6 (1986). If an organization meets the "major purpose test" and reaches the

requisite contribution/expenditure dollar threshold, it must register with the Commission as a political committee and file periodic reports of receipts and disbursements. 2 U.S.C. §§ 433 and 434.

B. Allegations & Responses

Complaint

On November 24, 1992, pursuant to Georgia state law, a run-off election was held for United States Senate after neither Democratic incumbent Wyche Fowler nor Republican challenger Paul Coverdell received fifty percent of the vote in the regularly scheduled November 3, 1992 general election. Between November 10 and November 18, 1992, after having exhausted their coordinated expenditure limitations, the NRSC made payments from their non-federal account to the NRLC. Specifically, on November 11, 1992 the NRSC donated \$45,000 to the NRLC.⁴

The complaint alleges that the NRSC spent this non-federal money to influence the election of Republican Senate candidate Paul Coverdell in the Georgia run-off. Based on the timing of the payments and the fact that the NRLC is "closely tied to and has strongly supported the Republican party over time," the complaint alleges that NRSC knew that the money would be expended on behalf of Coverdell. Since NRSC's nonfederal account contains corporate contributions, the complaint also alleges that by making the payments, the NRSC violated 2 U.S.C. § 441b by using corporate money in connection with a federal election and 2 U.S.C. § 441a by

4. The complaint also references additional payments from the NRSC. In fact, NRSC made a total of \$40,000 in payments to the NRLC in October of 1992.

making excessive contributions to the NRLC.

The NRSC's payments were accompanied by transmittal letters which stated that the money was to be used for "'good government activities' . . . 'in a manner consistent with' the organizations charter" and that "utilizing of this money in any way to influence a federal election is strictly prohibited."

The NRLC acknowledges that it was active in the Georgia run-off race. Counsel for NRLC and its separate segregated fund, NRL PAC, acknowledge that NRLC received \$45,000 from the NRSC and that the NRLC engaged in "non-partisan, issue oriented, get-out-the-vote activity" in the Georgia election. NRLC's response does not directly address whether the money received from the NRSC was the money used for its GOTV activity. Counsel's response also includes a copy of a GOTV telephone script apparently used in the run-off. The response acknowledges that NRL PAC made independent expenditures on behalf of Coverdell contemporaneous with the receipt of the NRSC funds but contends that both the acceptance of NRSC funds by NRLC and the activity of NRL PAC were "completely legal."

Amendment

On February 22, 1995, complainants filed an amendment stating that NRSC again violated the coordinated expenditure limitations of the Act by making \$175,000 in payments from non-federal funds to the NRLC between October 31 and November 4, 1994. The basis for the amendment was a series of statements made to a Washington Post reporter at a February 10, 1995 luncheon by Senator Phil Gramm, the Chairman of the NRSC at the time of the

1992 and 1994 elections. According to a February 12, 1995 Post article, Senator Gramm stated that "I made a decision . . . to provide some money to help activate pro-life voters in some key states where they would be pivotal in the election." (emphasis added). Gramm went on to say that the NRSC was particularly concerned about Senate elections in Minnesota and Pennsylvania. Gramm later contacted the reporter and indicated that his original statement was incorrect and that the reason for the payments was that the NRLC's "message conformed to the Republican message."

NRSC's transmittal letter from the General Counsel of the NRSC again accompanied each payment stating that the "contribution to your organization should be used for good government activities that are consistent with your organization's not-for-profit character. Please note that utilizing this money in any way to influence a federal election is strictly prohibited."

A one-page response to the amended complaint was received from counsel representing NRLC and NRL PAC. The response appears to acknowledge receipt of NRSC funds by the NRLC. The response also seems to acknowledge that NRSC funds were used for the GOTV activity. Counsel states that " . . . any distribution of voter guides or any nonpartisan get-out-the-vote calls by my clients would be lawful activities because they do not contain express advocacy -- regardless of whether my clients received any monies from the National Republican Senatorial Committee which were then used to fund such activities."

Although NRLC acknowledges receipt of funds from the NRSC, the responses generally fail to make clear the circumstances

surrounding the receipt and use of NRSC funds. Specifically, the responses fail to indicate whether the funds were solicited from the NRSC, whether there was any understanding between the NRSC and the NRSC as to how the funds would be spent beyond the boiler-plate statement in the transmittal letter, and most notably, how the funds were used.

C. Analysis

As discussed below, a variety of factors including the timing of the payments, NRSC's near exhaustion of coordinated expenditures limits at the time the payments were made, public remarks by an NRSC official, and the close nature and strategic importance of the various races support an inference that there may have been violations of the Act given the information presently available.

1. 1992 Activity

On November 24, 1992, three weeks after the November 3, 1992 general election, a Senate run-off election was held in Georgia between Republican Paul Coverdell and Democrat Wyche Fowler. Prior to the general and run-off elections, the NRSC had made direct contributions of \$17,500 and coordinated expenditures of \$535,607 on behalf of Paul Coverdell, the maximum allowed for an election. On November 6, 1992, the NRSC sought an advisory opinion from the Commission to determine whether the NRSC could permissibly make additional coordinated expenditures for the run-off. On November 19, 1992 the Commission advised the NRSC that it had split 3-3 on a draft opinion holding that no additional coordinated expenditures were available. The next day,

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the NRSC reported making an additional \$535,000 in coordinated expenditures for Coverdell in the run-off.⁵

Between November 10 and November 18, 1992, while awaiting the Commission's decision regarding the permissibility of additional coordinated expenditures, the NRSC made payments of \$45,000 to NRLC. At the time the NRSC made the payments, news reports in early November 1992 quote Coverdell aides as saying the campaign was low on cash in what was expected to be a very close run-off.

The NRLC acknowledges engaging in GOTV activity in the run-off but provides no details of its activities. The NRLC states it engaged in "non-partisan, issue oriented, get-out-the-vote activity" including phone banks using a script which urged persons called to "please vote tomorrow" after describing Coverdell's and Fowler's positions on certain abortion issues.⁶ The NRLC does not specify whether this GOTV effort was funded with the \$45,000 payment received from the NRSC six days before the run-off. Because the NRLC is not a reporting entity, the public record does not indicate how or when NRSC's funds were

5. Due to refunds from vendors, NRSC's disclosure reports reveal that it ultimately made \$509,570 in coordinated expenditures for the run-off.

6. The script, entitled "CARD 1: GET OUT THE VOTE MESSAGE" begins by stating "your vote in tomorrow's run-off Senate election is crucial." It goes on to compare the candidates' positions on abortion, characterizing Fowler as in favor of an "abortion on demand" bill and tax funded abortions and Coverdell as opposed to the bill and "against using tax dollars for abortion." It is not known at this time to whom NRLC targeted its GOTV calls or how many different scripts were utilized.

used. However, the NRLC's apparent last-minute GOTV activity in the run-off coincides with receipt of NRLC's payment.

The reports of NRL PAC, NRLC's separate segregated fund, reflect last-minute support of Coverdell. NRL PAC reports show no support for Coverdell prior to the run-off even though Coverdell faced the same opponent in the general election three weeks earlier. NRL PAC's reports for the run-off, however, reflect a \$2,500 contribution to Coverdell and \$15,330 in independent expenditures for radio ads supporting him, all made within 48 hours of NRSC's November payment.

2. 1994 Activity

In 1994, the NRSC once again made payments to the NRLC from its non-Federal account in the week before the general election. Between October 31, and November 4, the NRSC made four payments totaling \$175,000 to NRLC.⁷ In public comments to reporters, former NRSC chairman Senator Phil Gramm confirmed that the NRSC made the payments to assist Republican candidates in specific races stating:

the Minnesota race turned on us in the last 20 days and . . . I made a decision that we were on the verge of losing that race. Pennsylvania turned on us . . . and the focus of this expenditure was trying to get into those states where we thought it made a difference.

Hours after leaving the luncheon where the statements were made, but prior to the running of the story, Senator Gramm telephoned a

7. NRSC's 1994 payments to the NRLC consisted of the following: \$50,000 on October 31, \$50,000 on November 1, \$60,000 on November 3, and \$15,000 on November 4.

reporter to say that he had been mistaken in his explanation as "the rules under which you contribute to groups like this through political committees are very strictly set." Senator Gramm's revised statements may reflect a recognition on his part that his previous statements constituted an admission that the NRSC used the NRLC as a vehicle to make additional coordinated expenditures on behalf of Grams and Santorum.

Although Senator Gramm contacted the reporter to correct his statements before publication, asserting instead that the money was given because the NRLC's message conformed to the Republican message, he appeared on ABC's This Week With David Brinkley on February 12, 1994, two days after making the original statements saying "[c]learly we made the judgment that where we had close races . . . activism on behalf of the pro-life cause would help our candidates." In response to a question on whether the contributions were not simply a way of doing indirectly what the NRSC was prohibited from doing directly, Gramm responded with the following statement: "We promote the message of groups that are comfortable with us. We must have done a pretty good job. We -- there are 11 new senators. We won all 11 of those seats."

The combined national and state party coordinated expenditure limit for the 1994 Pennsylvania Senate race was \$1,075,544. The combined national and state party coordinated expenditure limit for the 1994 Minnesota Senate race was \$385,588. As of October 25, 1994, the NRSC had made its final significant coordinated expenditures for the Minnesota and Pennsylvania races. At that time, the NRSC had spent \$1,063,150 in Pennsylvania and

\$379,999 in Minnesota.⁸ Six days after making the last of these expenditures, which brought the NRSC close to its statutory limit for these elections, the NRSC made the first of its four payments to the NRLC.

News reports support Senator Gramm's statements that the Minnesota and Pennsylvania elections remained very close in the final weeks of the campaign. In Pennsylvania, Rick Santorum, who had been gaining steady ground, faced several problems after October 25. In the last week of October, Santorum's opponent was endorsed by Republican Theresa Heinz, widow of U.S. Senator John Heinz. On October 26, Santorum's opponent began airing an advertisement containing videotape of Santorum advocating raising the eligibility age for social security.⁹ Santorum himself acknowledged on November 3, 1994 that the ad had hurt him, particularly in the middle of the state. Polls also showed a drop in Santorum's support in the final two weeks which analysts attributed to the ad.¹⁰

Similarly, news accounts in Minnesota show that Rod Grams'

8. The NRSC made an additional \$1,150 in coordinated expenditures in Pennsylvania after October 25. The Pennsylvania expenditures were made in part by the Pennsylvania Republican Party.

9. The ad featured videotape of Santorum saying "It's ridiculous to have a retirement age in this country of 65" and that he would move back the retirement age to "at least 70. . . I'd go farther if I could."

10. Polls conducted by the Greensburg Tribune-Review which had Wofford and Santorum at 40% each on October 20, showed Wofford with a 44% to 43% edge by November 3 while KDKA TV polls showed Wofford's lead widen from 1 point to 4 points between October 18 and November 2.

opponent Ann Wynia was gaining on him in the twenty days before the election. A Minneapolis Star Tribune poll completed October 17 showed Grams at 42% to Wynia's 35%, while a poll by the same organization completed November 4, 1994 showed Grams at 42% to Wynia's 38%, within a 4 point margin of error. The accompanying Minneapolis Star Tribune article on November 6 opined that: "[w]ith the electorate split between Wynia and Grams, the election now hinges on who does a better job of activating supporters and getting them to vote on Tuesday." On October 23, 1994, Wynia also received the endorsements of both the Minneapolis Star Tribune and the St. Paul Pioneer Press, the two major metropolitan papers in the state. Finally, October Quarterly disclosure reports showed Wynia entering the last stretch of the election with more cash on hand than Grams.

Both the Pennsylvania and Minnesota Senate races were key to a Republican Senate majority.¹¹ The timing of the NRSC's payments to NRLC, made when two strategically important races appeared to turn against their candidates and NRSC had nearly exhausted its permissible spending limits, seems to support Gramm's initial statement that the payments to NRLC were made to aid Grams and Santorum. Moreover, given the closeness of both races, success appeared to depend on high voter turnout necessitating the maximum possible GOTV effort. Under these circumstances, NRSC's decision to make "donations" to NRLC, an organization with an established

11. The closeness and strategic importance of the Pennsylvania race for the Republican party is also evidenced by NRSC political director, Paul Curcio, traveling with Santorum in the last week of the campaign.

grassroots network, in the week before the 1994 general election, raises questions as to whether NRSC contributed to the NRLC to influence federal elections.

The assertion that the payments were routine charitable contributions accompanied by cautionary disclaimer letters does not adequately refute the possibility that the funds were to aid the election of federal candidates given the close proximity of each donation to a United States Senate election. See MCFL, 479 U.S. at 249 (1986). Information that is not currently known, including whether or not the payments were solicited, how the payees were chosen, why the payments were made when they were, discussions between the parties, and use of the money, would permit a fuller factual record for assessing whether the payments were intended to influence specific federal races.

3. Implications for NRLC

It appears that the NRSC, after exhausting its own ability to support its candidates, may have paid NRLC to perform GOTV activity on behalf of specific federal candidates in targeted races without using funds subject to the Act. See 2 U.S.C. §§ 441a(d) and 441b(a) and 11 C.F.R. § 102.5(a)(1).

By virtue of its close relationship with its candidates, political party committees are considered incapable of making independent expenditures. 11 C.F.R. § 110.7(b)(4). Therefore, all expenditures made by the NRSC in connection with the general election of an identified candidate are treated as coordinated expenditures. FEC v. Colorado Republicans, 1995 WL 372934 (10th Cir. 1995). Had the NRSC conducted GOTV activity aimed at

specific federal candidates, expenditures for those activities would be treated as coordinated expenditures subject to the applicable Section 441a(d) limit. Instead, it appears from the timing of the payments, the close nature and strategic importance of the races and public remarks made by NRSC's then-chairman, that the NRSC may have made payments to the NRLC to conduct GOTV activity, and possibly other federal election activity, in Georgia, Minnesota and Pennsylvania that the NRSC could not have undertaken itself without exceeding the Act's limits.

If the NRSC made payments to the NRLC in violation of 2 U.S.C. §§ 441a(d) and 441b, the spending of NRSC's funds necessarily has implications for the recipient organization. If the NRLC accepted payments from the NRSC which constituted coordinated expenditures and used them on behalf of specific candidates, the recipient organization effectively coordinated GOTV activities with the candidates, through NRSC, and benefited both the NRSC and the Republican Senate candidates whose races were targeted in the activities. As the NRLC is a corporation, any expenditures made by NRLC with regard to GOTV activity mentioning the Republican Senate candidates in the targeted states, may have constituted prohibited in-kind corporate contributions to the NRSC, the candidates, or both.

The NRLC admits having engaged in GOTV activities but contends that such activities were non-partisan and entirely legal. See e.g., 11 C.F.R. § 114.4(b) and (c). Specifically, the NRLC admits it engaged in "non-partisan, issue-oriented" GOTV phone bank activity for the 1992 Georgia run-off election. NRLC

also appears to acknowledge engaging in GOTV and voter guide activity for certain 1994 general election races but generally asserts that any such activities did not contain express advocacy. If, as it appears, however, the GOTV activities were funded by and coordinated with the NRSC, the expenditures for those activities would constitute in-kind prohibited contributions. See the proposed Commission regulations at 11 C.F.R. §§ 114.2(c) and 114.4(d) at 57 Fed Reg. 33566 (clarifying that corporations shall not coordinate GOTV drives with any candidate, group of candidates or political party). As such, it would be irrelevant whether or not NRLC's activities contained express advocacy. See Colorado Republicans, 1995 WL 372934 at *5.

Based on the foregoing, there is reason to believe that the National Right to Life Committee violated 2 U.S.C. § 441b(a).

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